

REMARKS

This paper is responsive to the non-final Office Action mailed August 28, 2006.

Claims 1-25 were pending in this patent application. Claims 1-7, 9-17, 19-22, and 24-27 have been rejected. (The Office Action states that claims 19-27 are rejected, but claim 23 was cancelled by previous amendment.) Claims 1, 9, 15, 20 have been amended and all of the rejected claims remain pending in this application.

No new matter has been added by this amendment. Support for the amendments includes at least paragraphs [0034], [0037], and FIGS. 2, 5, 8, and 10 in the application as published.

Claim Rejections - 35 U.S.C. § 103

Claims 1-7, 9-17, 19-22, and 24-27 were rejected under 35 U.S.C. § 103(a) as being obvious over Morley (GB 2261942) or Steingruber (U.S. 2,445,250) in view of Hess (CA 2,262,238). Amended independent claims 1, 9, 15, and 20, however, do not read upon any hypothetical combination of Morley or Steingruber and Hess. Rather, no combination of these references teach, suggest, or disclose all of the limitations of any of independent claims 1, 9, 15, and 20, as amended.

Steingruber teaches a portable space heater with a heating element and an electric lamp mounted adjacent to the back lower panel. The lamp 64 is connected in parallel with the main power switch that controls the heating element. In Steingruber the on and off status of the backlighting system is linked to the operating state of the heating element such that the light is on when the heating element is on and the light is off when the heating element is off. Steingruber does not teach providing aesthetic lighting (claims 1, 9, and 15) or illumination (claim 20) directly upon a rear panel (claims 1 and 15), a lattice structure (claim 9), or a plurality of ledges (claim 20) when no flames or heat are generated or simulated. Every element of amended claims 1, 9, 15, and 20 are therefore not taught by Steingruber and Steingruber does not read independent claims 1, 9, 15, or 20. Claim 1, 9, 15, and 20 are therefore allowable over Steingruber.

Morley discloses a “live fuel assembly for a gas-fired heating appliance” that includes “rear light units 10 and 11.” The lighting units 10 and 11 include a light bulb with a reflector. Morley neither teaches, discloses, nor suggests aesthetic lighting (claims 1, 9, and 15) or illumination (claim 20) directly shined upon a rear panel (claims 1 and 15), a lattice structure (claim 9), or a plurality of ledges (claim 20) when no flames or heat are generated or simulated. Every element of amended

claims 1, 9, 15, and 20 are therefore not taught by Morley and Morley does not read independent claims 1, 9, 15, or 20.

Hess does not remedy the deficiencies of either Steingruber or Morley. Hess teaches “enhancing the realistic appearance of flames produced by a simulated fireplace (gas or electric) by providing additional ambient lighting effects in response to sensed light intensity within the fireplace.” Abstract. The appearance of the flames is enhanced by a light flicker assembly 24 and a light flickering device 16. The light flickering assembly 24 includes a flicker element 46 with reflective strips. The light from the light source 38 reflects off of the flicker element 46 and is projected onto a screen 22 only when flame or simulated flame and heat are generated. The light is only indirectly shined on the back of the fireplace and “when the detected light falls below the light intensity threshold, control circuit 29 will turn off display lamp 27.” Page 5, lines 8-9. Furthermore, the light is positioned in the front of the fireplace.

Nothing in Steingruber, Morely, or Hess teaches, suggests, or discloses light for aesthetic lighting or illumination when the flame simulation or heat generating is off. In contrast, amended claims 1, 9, 15, and 20 recite aesthetic lighting (claims 1, 9, and 15) or illumination (claim 20) directly shined upon a rear panel (claims 1 and 15), a lattice structure (claim 9), or plurality of ledges (claim 20) when no flames or heat are generated or simulated. Claim 1 recites “a backlighting system positioned at a bottom back portion of the enclosure and including at least one light source to shine light directly upon a rear panel of the fireplace” where “the light from the light source provides aesthetic lighting upon the rear panel when no flames or heat are generated or simulated in the combustion chamber as sensed by the sensor.” Claim 9 recites an enclosure that includes “a plurality of ledges formed by a brick design such that a combination of a rear panel and a side panel generally form a lattice structure” and “a backlighting system positioned at a bottom back portion of the enclosure” that shines “light directly upon the lattice structure” to “provide a constant aesthetic lighting upon the lattice structure when no flames or heat are generated or simulated in the combustion chamber.” Claim 15 recites “a backlighting system positioned between the log set and the back panel of the enclosure” that shines “light directly upon components of the fireplace” that includes a back panel and a plurality of ledges and “wherein the light source provides aesthetic lighting on at least the back panel and the plurality of ledges when no flames are being generated in the combustion chamber.” Finally, claim 20 recites “a backlighting system including a light source in a back portion of the enclosure behind the log set” that shines “light directly on the plurality of

ledges wherein the light source provides an aesthetic illumination of the ledges when no flames, heat or simulated flames are generated in the combustion chamber.”

Independent claims 1, 9, 15, and 20 do not read upon any hypothetical combination of Morley or Steingruber and Hess. Rather, no combination of these references teach, suggest, or disclose all of the limitations of any of independent claims 1, 9, 15, and 20, as amended.

In addition, claims 2-7, 10-14, 16-17, 19, 21-22, and 24-27 depend directly or indirectly upon these independent amended claims. Each of claims 2-7, 10-14, 16-17, 19, 21-22, and 24-27 also further refine the claimed invention. Claims 2-7, 10-14, 16-17, 19, 21-22, and 24-27 are therefore allowable for at least the same reasons as given above for claims 1, 9, 15, and 20.

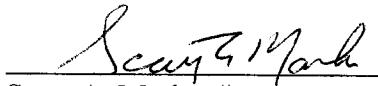
Reconsideration and withdrawal of these rejections is respectfully requested.

The Applicant herewith petitions the Commissioner to extend the time for reply to the Office Action dated August 28, 2006 for one (1) month, from November 28, 2006, to December 28, 2006. A credit card payment authorization in the amount of \$120.00 for a one-month extension of time is submitted herewith. No additional fee is believed to be necessary for the entry of this paper. Should any additional fee be required for entry of this paper, the Commissioner is authorized to charge the Faegre & Benson Deposit Account No. 06-0029 and in such event, is requested to notify us of the same.

CONCLUSION

Upon entry of this paper, claims 1-7, 9-17, 19-22, and 24-27 are pending in the present patent application. These pending claims are believed to be in condition for allowance. Reconsideration and prompt passage of the application to allowance is respectfully solicited.

Respectfully Submitted,
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